

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

BERNARD LOUIS DIT PICARD

U.S. Serial No. 10/018,050



Group Art Unit 1771

Filed: January 18, 2002

Examiner: J. Boyd

HYDROPHILIC COTTON PRODUCT COMPRISING A SOFT SURFACE AND A SCRAPING SURFACE

Commissioner for Patents
 P.O. Box 1450
 Alexandria, Virginia 22313-1450

Dear Sir:

Transmitted herewith is ~~an amendment~~ / a response in the above-identified application.

No additional fee is required.
 An additional fee is required as calculated below -

	Claims Remaining After Amendment	Highest No. Previously Paid For	Present Extra	Small Entity Add'l Rate Fee	Other Than A Small Entity Add'l Rate Fee
Total	_____	Minus * _____	_____	x \$ 9 \$ _____	x \$18 \$ _____
Indep	_____	Minus * _____	_____	x \$43 \$ _____	x \$86 \$ _____
First Presentation of Mul Dep Claim.....	x \$145 \$ _____	x\$290 \$ _____
Total Additional Fee.....					\$ \$

* The "Highest Number Previously Paid For" (Total or Independent) is the highest number of claims filed originally or highest number found from equivalent box of a prior amendment.

This response is being filed within the period for response.

Applicant(s) hereby petition for an extension from the date of the Examiner's Action as follows:

<input checked="" type="checkbox"/> First-Month Extension.....	\$ 55.00 / \$ 110.00
<input type="checkbox"/> Second-Month Extension.....	\$ 210.00 / \$ 420.00
<input type="checkbox"/> Third-Month Extension.....	\$ 475.00 / \$ 950.00

Small entity status of this application has been established.

A Check in the amount of \$ 110.00 is attached hereto. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 02-3690 of the undersigned attorney. A duplicate copy of this sheet is enclosed.

01/27/2004 SDENB0B1 00000074 10018050

Respectfully submitted,

01 FC:1251

110.00 OP

Date: January 23, 2004
 (703) 684-6885

By *Wm. J. Breuer*
 Attorney of Record, Reg. No. 33,161

5592/tat

"PATENT APPLICATION"



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

BERNARD LOUIS DIT PICARD

U.S. Serial No. 10/018,050

Group Art Unit 1771

Filed: January 18, 2002

J. Boyd, Examiner

HYDROPHILIC COTTON PRODUCT COMPRISING
A SOFT SURFACE AND A SCRAPING SURFACE

Alexandria, Virginia
January 23, 2004

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

R E S P O N S E

Dear Sir:

This is in response to the official action mailed September 23, 2003. Applicant has considered the outstanding action and respectfully submits that the claims of the captioned application are directed to patentable subject matter as set forth below.

The sole rejection is of claims 13-26 under 35 U.S.C. §103(a) over U.S. Patent No. 5,480,699 (Gerhartl) in view of U.S. Patent No. 5,843,064 (Koczab). Claim 13 is the sole independent claim.

Claim 13 is directed to a hydrophilic cotton product comprising at least one first outer layer and at least one second outer layer. The first outer layer

includes fine fibers exhibiting a low micronaire value and providing a soft side to the product. The second outer layer includes fibers exhibiting a micronaire value higher than the low micronaire value of the first outer layer. The second outer layer additionally provides a scraping surface to the product. A beneficial feature of the claimed product is the presence of two outer sides with different surfaces for providing different functions. One side is for scraping and therefore is useful to cleanse the skin, remove make-up or the like. The other side due to the provision of softness thereto allows for the application of make-up, lotion or the like to the face or skin of a consumer. (See specification, paragraph bridging pages 3-4.) Thus, the recognition and provision of a pad with such dual surfaces and the capabilities provided thereby is distinctive to the claimed invention. The applied art of the rejection, however, does not teach or suggest this claimed feature.

Gerhartl teaches a pad of cotton mat or similar material for applying and/or absorbing liquid or semi-solid substances. The pad has at least two plies which are compressed on both the outer surfaces to prevent lint formation. Gerhartl does not teach providing a soft outer surface and a scraping outer surface to different outer layers of a pad, but simply teaches a "product that feels

very soft and fluffy, but does not become linty or dusty" (see column 2, lines 50-51). No recognition of criticality is present in Gerhartl as to providing a soft side and a side with a scraping surface.

The Examiner relies on Koczab to make up for the shortcomings of Gerhartl. In particular, the Examiner relies on the teaching in Koczab of a nonwoven material of multiple layers having layers made of fibers of different denier ranges.

Koczab teaches a composite nonwoven material made up of a number of layers in which the fibers have a denier which decreases in a given direction from one successive layer to another. The nonwoven material is taught for use in an absorbent article of hygiene, e.g. diaper or dressing. The nonwoven material can be positioned directly on an absorbent pad or on the surface web of the article. The multi-layer material is taught as providing particular functions within the absorbent article based on the structure of the nonwoven material. Due to the larger pore diameters of the upper layers and the smaller pore diameters of the lower layers, break-through in the material insures rapid drying of the upper layers to maintain wetness away from a user. The smaller pore diameters in the lower layers serve to reduce the rise of body fluids out of the article

and thus reduce rewetting. Koczab contains no teaching or suggestion of providing a scraping surface to a product, in particular in conjunction with a soft surface on another side in the same product. The layer 5 of Koczab (column 3, lines 50-55) can not be equated to "the first layer" of the claimed invention as asserted by the Examiner since layer 5 of Koczab is used to provide break-through or capillarity. Additionally, layer 4 of Koczab is not an outer layer according to the teachings in Koczab. Additionally, at page 4 of the official action the Examiner states -

"It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the layer having a denier range of 1.7-3.2 of Koczab as the second outer layer and the layer having the denier range of 0.8-1.6 of Koczab as the first outer layer in the pad of Gerhartl motivated by the desire to have as pad with a high rate of drying out, improved rate of entry and good diffusion of fluids in the plane of the layers (Koczab, Abstract). It should be noted that the combination of Gerhartl in view of Koczab meet the micronaire requirements and, therefore, should inherently provide a soft side on the layer of the lower micronaire and a scraping surface on the layer of the higher micronaire."

Applicant respectfully disagrees with the Examiner's conclusion. Gerhartl teaches a pad with two compressed outer surfaces and a nearly uncompressed body wherein the compressed surfaces make the pad less permeable to liquids and semi-solids. One outer surface is less compressed than the other surface so that absorption into the body of the

pad can also occur (column 1, lines 41-56). Accordingly, it would defeat the purpose of Gerhartl to provide a pad with a high drying out rate as asserted by the Examiner as motivation for combination with the select teachings of Koczab relied on by the Examiner. Gerhartl teaches as desirable that the pad retain material on the outside of the pad for application to a user. Drying out of the outer surface would be contrary to this teaching since the material would not be readily available for application. The mere fact that the prior art can be modified does not make the modification obvious unless the prior art suggests the desirability of the modification. In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984). A modification rendering the product inoperable for its intended purpose would not make such modification suggested.

Further, simply because Koczab teaches different denier sizes does not render obvious applicant's claimed soft surface on one side and scraping surface on another side. Neither Gerhartl nor Koczab provide any teaching of providing or recognition of criticality in providing one outer layer with a soft surface and another outer layer with a scraping surface. In finding obviousness of the claimed invention over a combination of references, or over a single reference, a reason must appear in the prior art for making

the combination or for selecting the different features of a single reference. The court in In re Newell, 13 USPQ2d 1248 (Fed. Cir. 1989), at page 1250, stated -

"It is well established that in deciding that a novel combination would have been obvious, there must be supporting teaching in the prior art. 'That which may be inherent is not necessarily known. Obviousness cannot be predicated on what is unknown.' In re Spormann, 363 F.2d 444, 448, 150 USPQ 449, 452 (CCPA 1966)."

Moreover, for a proper rejection the claimed invention must be determined to be obvious from a fair reading of the prior art as a whole and requires a comparison of the subject matter claimed with the prior art as a whole. In re Gordon, 221 USPQ 1125, at 1127; In re Rothermel and Waddell, 125 USPQ 328, at 331-332; and In re Aufhauser, 158 USPQ 351, at 353. In the case at hand, there is nothing in the individual references which suggests the specific combination as claimed.

Accordingly, applicant submits that the combination of Gerhartl and Koczab fails to render the claimed invention obvious within the meaning of 35 U.S.C. §103. Withdrawal of the §103 rejection is respectfully requested.

Reconsideration and allowance of the claims is respectfully urged.

5592/USSN 10/018,050
Group Art Unit 1771

Respectfully submitted,

BERNARD LOUIS DIT PICARD

By Mary Breiner
Mary J. Breiner, Attorney
Registration No. 33,161
BREINER & BREINER, L.L.C.
115 North Henry Street
P.O. Box 19290
Alexandria, Virginia 22320-0290

Telephone: (703) 684-6885